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3 **UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

4 ) **Case No.:**  
5 **BELINDA ANDREWS-RAY,** )  
6 )  
7 Plaintiff, )  
8 v. )  
9 )  
10 **BLUESTEM BRANDS INC. D/B/A ) JURY TRIAL DEMANDED**  
**FINGERHUT,** )  
11 )  
12 Defendant. )

13 **COMPLAINT**

14 BELINDA ANDREWS-RAY (“Plaintiff”), by and through her attorneys,  
15 KIMMEL & SILVERMAN, P.C., alleges the following against BLUESTEM  
16 BRANDS, INC. d/b/a FINGERHUT (“DEFENDANT”):

17 **INTRODUCTION**

18 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection  
19 Act, 47 U.S.C. §227.

20  
21 **JURISDICTION AND VENUE**

22 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v.  
23 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).  
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3. Defendant regularly conducts business in the Commonwealth of Pennsylvania, thus, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

### **PARTIES**

5. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

6. Plaintiff is a natural person residing in Philadelphia, Pennsylvania 19111.

7. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).

8. Defendant is a corporation with its principal place of business located at 7075 Flying Cloud Drive, Eden Prairie, Minnesota 55344.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### **FACTUAL ALLEGATIONS**

10. Plaintiff has a cellular telephone number that she has had for at least one year.

11. Plaintiff has only used this phone as a cellular telephone.

12. Beginning in or about the summer of 2015 and continuing through in or around March 2017, Defendant placed repeated, continuous telephone calls to

1 Plaintiff's cellular telephone number.

2 13. Defendant used an automatic telephone dialing system, automated  
3 message and/or prerecorded voice when contacting Plaintiff.  
4

5 14. Plaintiff knew that Defendant was using an automatic telephone  
6 dialing system, automated message and/or prerecorded voice because she would  
7 regularly be greeted with a recording before speaking to Defendant's  
8 representatives.  
9

10 15. Defendant's telephone calls were not made for "emergency purposes."

11 16. Desiring to stop the repeated telephone calls, Plaintiff spoke with  
12 Defendant's agents to advise them that she no longer wanted to be contacted on her  
13 cellular telephone and to stop calling her in or around summer 2015.  
14

15 17. Additionally, Plaintiff explained her financial constraints to Defendant  
16 and told them she was ill and could not afford to make payments toward her  
17 account.  
18

19 18. Once Defendant was aware that its calls were unwanted and to stop,  
20 there was no lawful purpose to continue making further calls, nor was there any  
21 good faith reason to place calls.  
22

23 19. However, Defendant failed to update its records to restrict telephone  
24 calls to Plaintiff's cellular telephone despite Plaintiff's multiple requests to stop  
25 calling.  
26

1           20. Defendant, however, continued to call Plaintiff on her cellular  
2 telephone an excessive number of times per day thereafter.

3           21. It was frustrating, annoying and humiliating for Plaintiff to receive  
4 such continuous and repeated telephone calls from Defendant.  
5

6           22. After Defendant ignored Plaintiff's multiple requests and continued to  
7 call her repeatedly and continuously without her consent, she turned to  
8 downloading a blocking application to her cellular telephone to ultimately stop  
9 Defendant's harassing calls.  
10

11           23. Upon information and belief, Defendant conducts business in a  
12 manner which violates the TCPA.  
13

14                                   **COUNT I**  
15                                   **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**  
16                                   **PROTECTION ACT**

17           24. Plaintiff incorporates the forgoing paragraphs as though the same were  
18 set forth at length herein.

19           25. Defendant initiated multiple automated telephone calls to Plaintiff's  
20 cellular telephone number.

21           26. Defendant's initiated these automated calls to Plaintiff using an  
22 automatic telephone dialing system.  
23

24           27. Defendant repeatedly placed non-emergency calls to Plaintiff's  
25 cellular telephone.  
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1           28. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a  
2 private cause of action in an appropriate court based on a violation of the TCPA or  
3 the regulations prescribed under the TCPA to enjoin such violation.  
4

5           29. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a  
6 private cause of action in an appropriate court “to recover for actual monetary loss  
7 from such a violation, or to receive \$500 in damages for each such violation  
8 whichever is greater.”  
9

10          30. Based upon the conduct of Defendant, Plaintiff avers that the  
11 enhancement of damages provided for by the TCPA allowing for Plaintiff to  
12 recover up to \$1,500 per call/violation be applied to calls placed.  
13

14          31. Defendant’s conduct violated § 227(b)(1)(A)(iii) of the TCPA by  
15 placing repeated calls using an automatic telephone dialing system to Plaintiff’s  
16 cellular telephone.  
17

18          32. Defendant’s calls to Plaintiff’s cellular telephone after she revoked  
19 consent were not made with Plaintiff’s prior express consent.  
20

21          33. Defendant’s acts as described above were done with malicious,  
22 intentional, willful, reckless, wanton and negligent disregard for Plaintiff’s rights  
23 under the law and with the purpose of harassing Plaintiff.  
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1        34. The acts and/or omissions of Defendant were done unfairly,  
2 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
3 lawful right, legal defense, legal justification or legal excuse.  
4

5        35. As a result of the above violations of the TCPA, Plaintiff has suffered  
6 the losses and damages as set forth above entitling Plaintiff to an award of  
7 statutory, actual and trebles damages.  
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10                                    **PRAYER FOR RELIEF**

11        WHEREFORE, Plaintiff, BELINDA ANDREWS-RAY, respectfully prays for a  
12 judgment as follows:  
13

- 14            a. All actual damages suffered pursuant to 47 U.S.C. §  
15                                    227(b)(3)(A);  
16            b. Statutory damages of \$500.00 per violative telephone call  
17                                    pursuant to 47 U.S.C. § 227(b)(3)(B);  
18            c. Treble damages of \$1,500.00 per violative telephone call  
19                                    pursuant to 47 U.S.C. §227(b)(3);  
20            d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and  
21            e. Any other relief deemed appropriate by this Honorable Court.  
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**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, BELINDA ANDREWS-RAY,  
demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: July 12, 2017

By: /s/ Amy L. Bennecoff Ginsburg  
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